

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  NORTHERN IOWA WINDPOWER, L.L.C.	DOCKET NO. DRU-01-1 (WRU-01-8)
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**DECLARATORY ORDER**

(Issued March 20, 2001)

On February 19, 2001, Northern Iowa Windpower, L.L.C. (Northern), filed with the Utilities Board (Board) a petition for declaratory order or, in the alternative, request for waiver. Northern plans to build 89 wind generator turbines in Worth County, Iowa, and to sell the power produced to Interstate Power Company. The key question for the Board to decide is whether Iowa Code chapter 476A, requiring a certificate prior to construction, applies to Northern's project. On March 6, 2001, the Consumer Advocate Division of the Department of Justice filed a response stating it did not object to the Board granting either the declaratory order or waiver request. No objections to the petition were filed.

Iowa Code § 476A.2 provides "a person shall not commence to construct a facility except as provided in § 476A.9 unless a certificate for the facility has been issued by the board." The statute the Board has been asked to construe is Iowa Code § 476A.1(5). This section defines "facility" as follows:

"Facility" means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting

the generating plant to either a power transmission system or interconnected transmission system or both. Transmission lines subject to the provisions of this chapter shall not require a franchise under chapter 478.

In addition, Iowa Code § 476A.15 gives the Board the authority to "waive any of the requirements of [Chapter 476A] for facilities with a capacity of 100 or fewer megawatts" if the Board determines that the public interest would not be adversely affected by the waiver. If the Board finds Chapter 476A applies to the Northern project, Northern requests a waiver.

The facts concerning the project are recited in the petition for declaratory ruling. The Northern project will consist of 89 individual wind turbine generators with a maximum nameplate generating capacity of 900 kW each, for a total project nameplate capacity of 80.1 MW. The project will cover approximately 13 square miles in Worth County, although the project, including a substation, will actually occupy only about 37 acres. Northern states that by spreading the turbines over such a large area, it will be able to best utilize prevailing winds and minimize land use interference.

Because the units are dispersed, the output of each unit will be collected through a network of feeder or "gathering" lines. No more than seven individual turbines, with a maximum total nameplate capacity of 6.3 MW, will be located on any single feeder or "gathering" line.

The Board ruled on a similar request for declaratory ruling in In Re: Zond Development Corporation, Docket Nos. DRU-97-5 and DRU-97-6 (November 16, 1997). In that ruling, the Board found that the term "facility" as defined in Iowa Code

§ 476A.1(5) refers to "wind turbines connected to a single gathering line." The Board's ruling was consistent with Reid v. Iowa State Commerce Comm'n, 357 N.W.2d 588 (Iowa 1984). This case involved a single 150 MW generating plant that had already been added at the site of an existing 124 MW plant. The operating utility sought permission from the Commerce Commission (the Board's predecessor) to open and operate a landfill for the disposal of coal combustion residue at a farm six miles away. The Commission granted the certificate, finding the landfill was an essential component of the generating plant.

On appeal, the issue concerned the definition of "facility" as used in Iowa Code § 476A.1, and in particular whether the words "at a single site" modify the term "any electric power generating plant" as well as the term "a combination of plants." The Court said the phrase modified only the term "a combination of plants." While the Court never therefore directly addressed the question of the proper application of the single site requirement, the implication was that a landfill located six miles away from the generating plant would not have met, if it had applied, the single site requirement.

The Federal Energy Regulatory Commission (FERC) provides that a qualifying small power production facility, located at any one site, cannot exceed 80 MW. In determining what is a single site, FERC considers everything within a one-mile radius as part of the site. 18 CFR 292.204(a)(2). From the map submitted with Northern's petition, if site were defined in this manner, no single site would exceed the 25 MW

threshold. The FERC rules demonstrate another agency has limited the definition of "site" so a single site does not encompass tens of square miles of wind turbines.

In addition to the legal precedent cited above, the purposes behind and the interplay between Chapter 476A and Chapter 476 must be examined. Chapter 476A generally requires any person to acquire a generating certificate for a facility of 25 MW or more. If the facility is over 25 MW but 100 MW or fewer, the Board may grant a waiver of the statutory requirements and a generating certificate would not have to be obtained. A certificate proceeding is a contested case proceeding. Generally, these proceedings take a minimum of six months.

The decision criteria for a certificate proceeding case are found in Iowa Code § 476A.6. The fourth, fifth, and sixth subsections apply only if the applicant is a public utility as defined in Iowa Code § 476.1. For a public utility, the Board must find the utility has a comprehensive energy management plan to reduce peak loads and increase efficient use of electricity, has considered long-term purchases of electricity, and has considered all feasible alternatives to the proposed facility. These criteria were adopted when there was a concern that public utilities serving Iowa customers might build unneeded expensive plants. Northern is not a public utility as defined in section 476.1 because it does not provide retail electric service.

The other three statutory criteria, public convenience and need, willingness to operate pursuant to the provisions of a certificate, and minimum environmental impact, have little or no relevance to Northern's facility. The legislature has stated that the public policy of this state is "to encourage the development of alternate

energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use." Iowa Code § 476.41. With respect to public convenience and need, no further Board determination is required.

With respect to the second factor, Northern's willingness to perform the services will be evidenced by its contract or contracts to sell power. If Northern fails to perform, the buyer or buyers will have breach of contract remedies. Finally, the Board has generally deferred to findings by the Department of Natural Resources and local authorities on environmental and other permit issues. Northern will have to obtain any necessary environmental or other permits from the appropriate state or local body.

As it did in the Zond case, the Board determines that the term "facility" refers to the wind turbines connected to a common gathering line. According to the petition, seven turbines will be connected to a gathering line. Because each group of seven turbines has a nameplate capacity of no more than 6.3 MW, the 25 MW threshold of Chapter 476A is not met and no siting or generation certificate must be obtained from the Board.

The Board's construction is based, in part, on the interplay between Chapter 476A and the legislative policy embodied in Iowa Code § 476.41. Because of this legislative policy, any Board determinations required under Chapter 476A have already been made or are appropriately deferred to another regulatory body. If these

projects did not involve renewable or alternate energy, the Board's construction may have been different.

The Board has found Chapter 476A does not apply to Northern's project as set forth in its petition. Therefore, the waiver request is moot and will not be addressed.

**IT IS THEREFORE ORDERED:**

The petition for declaratory order filed by Northern Iowa Windpower, L.L.C. on February 19, 2001, is granted to the extent discussed in this ruling.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Sharon Mayer  
Acting Executive Secretary, Asst. to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of March, 2001.